

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:

CLEARWATER TRANSPORTATION LTD.,

Case No. 19-50292-CAG

Debtor.

Chapter 11

**SELIG LEASING COMPANY, INC.'S LIMITED OBJECTION AND RESERVATION
OF RIGHTS TO FINAL APPROVAL OF DEBTOR'S MOTION FOR INTERIM AND
FINAL ORDERS AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL
AND GRANTING OTHER RELIEF**

Selig Leasing Company, Inc., ("Selig Leasing") by its undersigned attorneys, hereby submits this limited objection and reservation of rights in connection with Debtor's Emergency Motion for Interim and Final Orders (I) Authorizing the Debtor to Use Cash Collateral; (II) Granting Adequate Protection; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief (Docket no. 9; the "Motion"), as well as the proposed Final Order granting the Motion (Docket no. 45; the "Final Order") and the proposed Budget filed therewith (the "Budget") as follows:

1. In business since 1949, Selig Leasing has grown to be one of the largest and most respected independent leasing companies for small and medium-sized companies throughout the United States, with a nationwide dealer network.

2. Selig Leasing currently leases fifty-five (55) vehicles to Debtor Clearwater Transportation, Ltd. ("Clearwater" or the "Debtor") under a master lease dated March 1, 2018 and related documentation for each Selig Leasing-owned vehicle leased to Clearwater (each a "Selig Vehicle" and collectively, the "Selig Vehicles"). Each Selig Vehicle is generally subject to an 18-

month lease, and of the total number of vehicles leased to the Debtor, thirty-eight (38) Selig Vehicles were originally leased in mid- to late-2018, and seventeen (17) Selig Vehicles were leased by the Debtor in January 2019.¹

3. Under the Motion and the Final Order, Debtor only seeks authorization to use Selig Leasing's cash collateral arising from the sale of any Selig Vehicle, and only after the Debtor has obtained a payoff quote and has fully paid off the amount owed to Selig Leasing.² Generally speaking, under the applicable leases, the Debtor is only permitted to exercise an option to purchase a leased vehicle from Selig Leasing and re-sell the same after the first 12 months of the lease, and only upon 30 days prior notice to Selig Leasing. Therefore, construing the Motion and the Final Order only to seek authority to sell any Selig Vehicle in compliance with all terms and conditions of the applicable lease documents, and only if such sale generates sufficient proceeds so that Selig Leasing is paid in full in the transaction, Selig Leasing generally does not object to this provision of the Final Order, provided however, all Selig Leasing's rights to a full payoff, including costs, expenses, and fees, and full compliance with all other terms and conditions of the parties' lease agreements must be preserved. To the extent that the Debtor construes the Final Order to authorize sales of Selig Vehicles in any other circumstances, Selig Leasing objects to such construction.

4. Further, with respect to any Selig Vehicles, the Debtor should promptly provide to Selig Leasing documents, records, and such other information reflecting the mileage, condition, maintenance, repairs, and insurance coverage as Selig Leasing shall request, as further adequate protection for Selig Leasing's interest in the Selig Vehicles.

¹ Copies of the lease agreements are not attached due to confidentiality concerns and because the Debtor already has copies. Should the need arise, Selig Leasing can produce the documents upon request subject to appropriate protections.

² Notwithstanding the Motion and the Final Order, Selig Leasing notes that the Budget does not contemplate any proceeds from "Vehicle Sales," although that is a line item in the Budget.

5. In addition, in connection with the Debtor's leasing of the seventeen (17) vehicles from Selig Leasing in January 2019 (which all were 2019 GMC Terrains), Debtor represented that it was entitled to obtain dealer or manufacturer incentives by virtue of its contractual agreements with Hertz, which incentives amounted to \$6,000 per vehicle. The Debtor indicated to Selig Leasing that those incentives would be delivered to Selig Leasing to be allocated to each applicable Selig Vehicle, so that when the Debtor subsequently sought to sell these GMC Terrains, the Debtor would be able to generate additional proceeds for its operations. However, while Selig Leasing understands the Debtor expects to receive the applicable incentives relating to the GMC Terrains in the next 30-45 days, there is no corresponding entry in the Budget for the receipt of such incentives. There is a line item in the Budget for "Fleet Incentives," but the Budget does not reflect the receipt of any such incentives over the life of the Budget, nor any corresponding payment to Selig Leasing.

6. Accordingly, the Budget should be modified to reflect the Fleet Incentives the Debtor reasonably expects to receive, and should further provide for additional payments to Selig Leasing of any such incentives received relating to applicable Selig Vehicles. Selig Leasing will then hold such incentives as agreed, pending subsequent sales of such vehicles.

WHEREFORE, Selig Leasing requests that the Final Order be clarified and/or amended to address the issues and reservations of rights noted above, and that the court grant such additional or further relief just and equitable under the circumstances.

Dated: March 18, 2019.

Respectfully submitted,

MARTIN & DROUGHT, P.C.
Bank of America Plaza, 25th Floor
300 Convent Street
San Antonio, Texas 78205-3789
Telephone: (210) 227-7591
Facsimile: (210) 227-7924

By: /s/ Michael G. Colvard
Michael G. Colvard
State Bar No. 04629200

~and~

KOHNER, MANN & KAILAS, S.C.

By: /s/ Samuel C. Wisotzkey
Samuel C. Wisotzkey
Washington Building
Barnabas Business Center
4650 N. Port Washington Rd.
Milwaukee, WI 53212-1059
Telephone (414) 962-5110
Facsimile (414) 962-8725
swisotzkey@kmksc.com

**ATTORNEYS FOR SELIG LEASING
COMPANY, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2019, he caused the foregoing to be electronically filed with the Clerk of the Court using the ECF system that will send notification of such filing to the parties indicated on the Notice of Electronic Filing, and that he further caused the foregoing to be served: by United States first class mail, postage prepaid, upon the following:

Via Regular U.S. Mail:

Patrick L Huffstickler, Esq.
Dykema Gossett PLLC
112 E. Pecan Street, Suite 1800
San Antonio, TX 78205

Office of the U.S. Trustee
Attn: Kevin Epstein, Esq.
615 E. Houston Street, Suite 533
San Antonio, TX 78205

Via ECF:

Robert L. Barrows on behalf of Creditor Frost Bank
rbarrows@wdblaw.com, bchapa@wdblaw.com;PACERnotice@gmail.com

Kay D. Brock on behalf of Creditor Travis County
bkecf@traviscountytexas.gov, kay.brock@traviscountytexas.gov

Christal A Delgado on behalf of Creditor The Hertz Corporation
cdelgado@seyfarth.com, bmaxwell@seyfarth.com

Michael Flume on behalf of Creditor Newtek Small Business Finance, LLC
mflume@flumelaw.net, egillaspie@flumelaw.net; sflume@flumelaw.net

Patrick L. Huffstickler on behalf of Debtor Clearwater Transportation, Ltd.
phuffstickler@dykema.com, mlongoria@dykema.com; docketsat@dykema.com

Tara LeDay on behalf of Creditor Bell County Tax Appraisal District
tleday@ecf.courtdrive.com; kmorriss@mvbalaw.com; ccain@mvbalaw.com; vcovington@mvbalaw.com; bankruptcy@mvbalaw.com; jwilliams@mvbalaw.com; alocklin@mvbalaw.com

Jesse Tyner Moore on behalf of Debtor Clearwater Transportation, Ltd.
jmoore@dykema.com

Herbert C Shelton, II on behalf of Creditor Stephanie Hernandez
cshelton@legalstrategy.com, lrobson@legalstrategy.com

Donald P. Stecker on behalf of Creditor Bexar County
don.stecker@lgbs.com

John Mark Stern on behalf of Creditor Texas Comptroller of Public Accounts
john.stern@oag.texas.gov, sherri.simpson@oag.texas.gov

Sabrina L. Streusand on behalf of Creditor Austin CONRAC LLC
streusand@slollp.com, prentice@slollp.com

United States Trustee - SA12
USTPRegion07.SN.ECF@usdoj.gov

H. Elizabeth Weller on behalf of Creditor Tom Green CAD
bethw@publicans.com

By: /s/ Michael G. Colvard
MICHAEL G. COLVARD